

Shaw Creek – (West Valley Yakima)

Apparent violations:

Mr. Greg Bainter and Bainter Group LLC (9004 Tieton Dr., Yakima, WA 98908)

1. Illegal diversion of the waters of Shaw Creek into a new watercourse in 2012 without legal permits.
2. Illegal filling of the historic (legal watercourse of Shaw Creek – defined by the land surveys of 2004 and 2011) with fill material (without legal permits)
3. Illegal filling of Shaw Creek wetlands in 2012
4. Illegal filling of the Shaw Creek Riparian Buffer Zones
5. Illegal filling of the Shaw Creek FEMA 100-year Floodplain for the purpose of expanding the Bainter B-2 commercial zoning district
6. Illegal mowing (repeated) of vegetation within the Shaw Creek Riparian Buffer Zone, regulated wetland buffer zone, and Shaw Creek FEMA 100-year Floodplain
7. Illegal dewatering of Shaw Creek – a DNR F-stream (perennial stream, natural watercourse, documented populations of fish)
8. Illegal introduction of fecal bacteria (E. coli) into the subsurface aquifer
9. Illegal destruction of habitat for two federally endangered species – Bull Trout and Steelhead
10. Falsification of the JARPA for 2012 and 2014

11. Illegal alteration of the Shaw Creek watercourse and floodway followed by crawl space flooding of homes immediately downstream from the illegal Bainter diversion of Shaw Creek.
12. Conspiracy to violate the federal Clean Water Act (involving Mr. Bainter, Mr. Radke, Mr. Durant, Mr. Peters, Mr. Bartrand)

Mr. Glen Radke (8910 Tieton Dr., Yakima, WA 98908)

1. Illegal dredging of Shaw Creek in 2014 (without permits)
2. Illegal destruction of Shaw Creek wetlands in 2014 (without permits)
3. Illegal application of herbicide along the north high water mark of Shaw Creek in 2014 (without permits)
4. Illegal destruction of trees within the Shaw Creek Riparian Buffer Zone in 2014. (without permits)
5. Illegal mowing of vegetation up to the high water mark of Shaw Creek
6. Illegal disruption of the hyporheic zone of Shaw Creek in 2014
7. Illegal placement of fill material within the Shaw Creek FEMA 100-year Floodplain (without permits)
8. Illegal destruction of habitat for two federally endangered species – Bull Trout and Steelhead
9. Conspiracy to violate the federal Clean Water Act (involving Mr. Bainter, Mr. Radke, Mr. Durant, Mr. Peters, Mr. Bartrand)

Mr. Thomas Durant

1. Conspiracy to violate the federal Clean Water Act (involving Mr. Bainter, Mr. Radke, Mr. Durant, Mr. Peters, Mr. Bartrand)
2. Accessory to violations of the Clean Water Act (diversion of Shaw Creek, filling of legal watercourse of Shaw Creek, filling of Shaw Creek Riparian Buffer Zone, filling of Shaw Creek wetlands, filling of Shaw Creek FEMA 100-year Floodplain)
3. Violation of American Institute of Certified Planners ethics standards (illegal alteration of Zoning Ordinance – exhibit 5, other) – grounds for expulsion
4. Falsification of the JARPA of 2014

Mr. Eric Bartrand – Region 3, Washington Department of Fish and Wildlife

1. Conspiracy to violate the federal Clean Water Act (involving Mr. Bainter, Mr. Radke, Mr. Durant, Mr. Peters, Mr. Bartrand) (*Comment: Mr. Bartrand drafted an HPA in 2012 specifying the steps for Mr. Bainter to take to move Shaw Creek into a new watercourse and then to fill the legal watercourse and associated critical areas. There was no written project application. There was no public commenting period. No other permits were issued such as the USACE or Critical Area and Floodplain Development Permit. Mr. Bartrand immediately copied this HPA to the two lead agencies for Shaw Creek NEPA*

*– Yakima County Surface Water, and Mr Peters – in charge of Shaw Creek
NEPA for the City of Yakima)*

2. Conspiracy to destroy threatened fish – Speckled Dace
3. Conspiracy to destroy habitat for two fish that are included on the federal Endangered Species List – Bull Trout and Steelhead
4. Accessory to violations of the Clean Water Act (diversion of Shaw Creek, filling of legal watercourse of Shaw Creek, filling of Shaw Creek Riparian Buffer Zone, filling of Shaw Creek wetlands, filling of Shaw Creek FEMA 100-year Floodplain)

**Mr. Jeff Peters – Supervising Planner for the City of Yakima; Code Enforcement;
Shaw Creek NEPA (in charge) for the City of Yakima**

1. Conspiracy to violate the federal Clean Water Act (involving Mr. Bainter, Mr. Radke, Mr. Durant, Mr. Peters, Mr. Bartrand)
2. Accessory to violations of the Clean Water Act and other environmental regulations (diversion of Shaw Creek, filling of legal watercourse of Shaw Creek, filling of Shaw Creek Riparian Buffer Zone, filling of Shaw Creek wetlands, filling of Shaw Creek FEMA 100-year Floodplain, killing of fish, destruction of in-stream habitat, illegal dredging, destruction of trees within the Riparian Buffer Zone)
3. Failure to enforce the Yakima Critical Areas Ordinances – (illegal diversion of Shaw Creek; illegal filling of the legal watercourse of Shaw Creek; illegal filling of wetlands; illegal filling of the Riparian Buffer Zone; illegal filling of

the Shaw Creek FEMA 100-year Floodplain (for the purpose of expanding the Bainter B-2 commercial zoning district); illegal mowing of vegetation (Riparian Buffer Zone, Shaw Creek FEMA 100-year Floodplain, regulated wetland buffer zone); failure to address home flooding resulting from illegal Bainter diversion of Shaw Creek; failure to address dewatering of Shaw Creek; failure to address introduction of fecal bacteria into the subsurface aquifer at the Bainter site.)

4. Submission of bogus (false) project plans in 2012 (the so-called “Bainter Riparian Habitat Improvement Project”) to the Yakama Indian Nation; the true project was a Habitat Destruction Project. The submission of false materials to the Yakama Indian Nation may have violated Treaty Rights between the United States and the Tribe (dealing with streams, salmon, steelhead).
5. Falsification of materials within City of Yakima Staff Report of September 25, 2014 and October 23, 2014.
6. Violation of the Open Public Meeting Act – Mr. Peters was informed in advance that Mr. Bainter would be relocating Shaw Creek and filling the historic (legal) watercourse and associated wetlands. Mr. Peters knew that Mr. Bainter did not possess the legally required permits to perform the stream relocation and filling. Mr. Peters made the decision to ignore the illegal alterations of Shaw Creek and the associated critical areas. Mr. Peters disseminated bogus project plans to the public for comment. Members of the public were denied the opportunity to make comments regarding the Planning

Decision to allow for the relocation of Shaw Creek, the expansion of the Bainter B-2 commercial zoning district, the filling of the legal watercourse, and the filling of Shaw Creek critical areas.

7. Shaw Creek NEPA predetermination – Per Mr. Peters, Shaw Creek has been predetermined to move to a new location; it is self-serving for Mr. Peters to allow for critical area destruction so that his NEPA project will not be required to replace the critical areas that have already been destroyed.
8. Conflicts of interest – Mr. Peters has made decisions joining the City of Yakima into possible legal and financial liabilities (paying for flood damaged homes within Cottonwood Grove Subdivision; paying for restoration of critical areas within and along Shaw Creek; paying for legal defense before the Growth Management Hearing; paying for legal defense of CWA violations). Mr. Peters can no longer be considered fair and objective when assessing Bainter critical area violations, Bainter critical area permits, and NEPA decisions; these decisions are likely to reflect motivation by Mr. Peters and the City of Yakima to extricate from liabilities. The City (and Mr. Peters) would not be likely to favor any continuation of the Status Quo. Rather, the City would hope for an immediate relocation of Shaw Creek into a new flood control ditch, making consideration of allowed critical area alterations to be moot.
9. Proposed violation of EO 11988 – Mr. Peters, as director of Shaw Creek NEPA, proposes to use federal grant money to completely eliminate the Shaw Creek FEMA 100-year Floodplain in violation of EO 11988. And the primary

purpose for Shaw Creek NEPA is to permit rapid urban expansion into the floodplain so that the City can receive real estate taxes from 1000 new homes slated to be built in the area that is now a federally protected floodplain.

10. Proposed violations of the federal Clean Water Act with the Shaw Creek NEPA project. (No critical areas, no trees, no wetlands, no pools, no fish, no birds, disruption of hyporheic zone)
11. Violation of the Public Record Act – Removal of the 2012 HPA and removal of the 2012 JARPA from the Bainter project file so that no member of the public has access to these vital public records. No member of the public is being allowed to discover the true, illegal events in 2012 where a JARPA (dealing with habitat improvement) was submitted for an HPA (dealing with habitat destruction).

1990s and earlier history

During the late 1990s, the flood of the West Valley of Yakima began to be developed by Mr. George Layman and Mr. Hochrein who proposed a large development called Cottonwood Grove. This development was to be built in areas prone to flooding; local residents provided testimony and photographs indicating that sheet flooding occurs across the valley flood due to snow melts and sudden rain events. Flooding overflows the banks of Shaw Creek, a perennial fish-bearing stream. Sheet flooding flows over the valley floor towards Wide Hollow Creek. Shaw Creek is a side channel to Wide Hollow Creek. Wide Hollow Creek flows into the Yakima River. And the Yakima River flows into the Columbia River. Wide Hollow Creek and Shaw Creek are habitat for Bull Trout and

Steelhead. There are no longer active Steelhead runs within most of Wide Hollow Creek. However, substantial amounts of published materials affirm that this watercourse is habitat for Bull Trout and Steelhead.

The pre-settlement watercourse for Shaw Creek flowed in a direction from northwest to southeast. Nearly 100 years ago, early settlers altered the course of Shaw Creek to a position along the north edge of the valley floor. One parcel in the far west portion of the valley has irrigation rights for a private residence; these water rights were established in the late 1800s. Reportedly there is one property owner with “riparian” water rights to hold some stream water in a fish pond. During the past 100 years, the waters of Shaw Creek have flowed continuously and populations of fish have thrived within pools. Mature trees have grown along the stream. Wetlands have developed. Flocks of migrating birds such as geese and ducks have used the stream for food and rest. Mammals have used the stream and riparian area as habitat; species include: raccoons, skunks, coyote, other. Local birds include: pheasant, hawks, eagles, ducks, other. Local fish include: trout, speckled dace.

During the majority of the twentieth century, land located south of Shaw Creek was in hay production and alfalfa production. Land to the north of Shaw Creek was in orchard production. During the first half of the twentieth century, approximately 25-45 kg of lead-arsenic per acre per year was sprayed on orchard crops; arsenic remains within the soils. Arsenic is known to cause cancer and birth defects (anencephaly and spina bifida). Over time, the surface waters of Shaw Creek have become contaminated with fecal bacteria, E. coli. High counts of E. coli have been documented within the stream. No

farming activities utilize the flows of Shaw Creek for irrigation. During the warmer irrigation season, natural flows of water are augmented by irrigation runoff from agricultural lands. During the last 25 years, Yakima County and the City of Yakima have permitted significant destruction of critical areas along Shaw Creek.

Mr. Glen Radke

When Mr. Radke moved to 8910 Tieton Drive, he began mowing up to the high water mark of the stream. Yakima County and the City of Yakima failed to protect critical areas and simply ignored complaints that the critical area along Shaw Creek was being mowed. To the contrary, when Cottonwood Grove Subdivision was started in the late 1900s, critical areas were established and protected for fifty feet on each side of the stream (Shaw Creek). The Bainter family at 9004 Tieton Drive owned some vacant land along the stream. At rare times, horses would browse grass and weeds during warmer months. Otherwise, there were no agricultural activities on the site during the last 25 years.

Bainter and Perrault businesses

On the Bainter parcel, an illegal business was run by a non-resident who used a large metal garage (monster garage) for a monster truck garage. The owner lived in another town, but kept his truck and huge tires on the site. An elderly Bainter woman (now deceased) used a studio for art and projects; there was never any business activity in the small studio near the house. A meat cutter (Perrault) maintained a butcher shop; he retired over a decade ago. For a year, a landscaping business was on site and then a sign

business was run for a year. But the metal meat shop has not had any business activity for about a decade.

Bainter Group LLC

In 2009, Bainter Group LLC purchased the Perrault property and now owns the land on both sides of Shaw Creek. It is believed that Greg Bainter is both the owner and employee of the Bainter Group LLC. According to public records, Bainter Group LLC is a fruit business, growing fruit in the Yakima area. However, there are no fruit operations of any kind on the Bainter land; there have been no fruit operations of any kind during the last 25 years. The land owned now by Bainter Group LLC has been idle with no commercial or private use.

Commercial development

In 2003, Mr. Bainter, Mr. Radke and Mr. Perrault made proposals to convert the land from R-1 to B-2. At that time, it was well documented from Cottonwood Grove environmental documents that Shaw Creek was a perennial, fish bearing stream with historic habitat for Steelhead; these facts were reiterated by the developers within their environmental documents. Between 2003 and 2007, Mr. Radke constructed an illegal garage with no permits and ran an illegal vehicle modification business. After four years of illegal operation (including the use of R-1 land for access), the City of Yakima belatedly shut down the illegal garage. The City Planning Official (Mr. Doug Maples) in charge of the Radke development project was fired after a scandal (related to sexual misconduct in the workplace).

Land Use and Zoning Hearings

In 2004, the developers presented the rezone to the Hearing Examiner for approval. During Open Record Hearings the developers made numerous concessions related to street improvements, utilities and buffer zones. Ten years following the rezone, no street improvements have taken place and no utilities have been placed. Following conclusion of the public meetings, the developers completely changed the zoning ordinance by pulling the circulated copy of the site plan; a completely new and altered site plan was added to the ordinance. Significant changes were made to the wording of the ordinance. The site plan alterations and wording alterations were performed by Mr. Thomas Durant who maintained close communication with Mr. Radke and Mr. Bainter. The illegal alterations of ZO 14-2004 represent ethical violations for the American Institute of Certified Planners (Mr. Durant's professional credential). Mr. Durant and Planning Officials violated the Open Public Meeting Act by performing the illegal changes to the ordinance.

As noted, Mr. Radke's illegal vehicle modification business was shut down in 2007. In 2007, Mr. Bainter and Mr. Radke proposed to place a sewer line across Shaw Creek. At that time, the developers indicated that they would perform lateral boring so that the stream and wetlands would not be impacted. At that time, they indicated that trout were resident within the stream. Also the developers indicated that ground water infiltration would require dewatering of the excavation trenches. When the City of Yakima shut down Mr. Radke's business, the plans to construct a sewer project were cancelled. At no

time did Mr. Radke possess an access easement; it is reported that Mr. Bainter has refused to sell an easement to Mr. Radke.

Mowing of critical areas

At about the time that Mr. Radke stopped the illegal vehicle modification business, the City of Yakima issued to Mr. Radke a letter that granted the right to mow up to the high water mark of Shaw Creek. Previously, the City had ignored complaints that the critical areas should be protected. This decision was formalized by the City of Yakima letter granting to Mr. Radke the authorization to mow vegetation within the riparian buffer zone. Verbally, Mr. Peters has indicated that the mowing along about 1000 feet of Shaw Creek up to the high water mark is considered by him to be a “minor alteration”, similar to mowing a lawn. Mr. Radke’s home and yard are located far away from the stream and far away from the Shaw Creek Riparian Buffer Zone. The Shaw Creek Riparian Buffer Zone on the Radke parcel is not the lawn for Mr. Radke. At no time has the City of Yakima issued a Notice of Violation for any critical area violation by Mr. Radke. Since 2007, Mr. Radke has repeatedly mowed all vegetation up to the high water mark of the stream. Mr. Radke also has repeatedly cut trees and limbs directly over the water. Large woody material has been removed from the riparian zone by Mr. Radke. In 2014, Mr. Radke brought an excavator to the site and illegally destroyed wetlands and fish containing pools. Resident populations of fish were exterminated. Fill material was placed within the Shaw Creek FEMA 100-year Floodplain by Mr. Radke.

2012 Bainter Riparian Habitat Improvement Project

As noted, Bainter Group LLC purchased the Perrault parcel in 2009 for approximately \$450,000. In 2012, Mr. Bainter (and Bainter Group LLC) indicated that on his own initiative, he would be planting a zone of native vegetation along Shaw Creek. Mr. Bainter submitted JARPA, SEPA, and Critical Area Forms. Much of the information and responses submitted on the project application materials were false. Mr. Bainter proposed to plant 14,000 Sq Ft along Shaw Creek. In addition, Mr. Bainter indicated that he would personally pay for the construction of a dry overflow channel that would save homes (in Cottonwood Grove) from flooding. Within the Bainter project proposal, there was documentation that the water table and subsurface aquifer was noted to be 24-48 inches below the surface.

Mr. Eric Bartrand - WDFW

One of the commenting agencies was the Washington Department of Fish and Wildlife; Mr. Eric Bartrand was the person drafting the letter in response to the proposal – the so-called “Bainter Riparian Habitat Improvement Project”. Rather than comment about the benefits of this project for the fish and wildlife along Shaw Creek, Mr. Bartrand made the statement that Mr. Bainter actually considered Shaw Creek to be a nuisance and that the stream should be abandoned and moved to a new watercourse. Such comments appeared to have nothing to do with a habitat improvement project. But the comments by Mr. Bartrand showed that Mr. Bainter was not interested in habitat improvement. And Mr. Peters indicated strongly that Shaw Creek should be completely moved off the Bainter land.

Bogus project proposal of 2012 - and – illegal HPA

The Bainter project proposal was bogus; Mr. Bainter did not perform the so-called “Bainter Riparian Habitat Improvement Project”. His false documents were processed by the City and Mr. Bainter was issued a Critical Area Permit to plant vegetation and to construct a dry flood channel. Mr. Bainter was also required to obtain an HPA (hydraulic project approval) from the Department of Fish and Wildlife – Region 3, located in Yakima. Mr. Bainter presented his JARPA form (dealing with the planting of native vegetation) and received an illegal HPA of 2012 dealing with the relocation of Shaw Creek and the filling of the legal watercourse and associated wetlands. A local biologist, Mr. Eric Bartrand, issued the HPA of 2012. Essentially, Mr. Bartrand did not require Mr. Bainter to present an application for the relocation of the stream and the filling of the legal watercourse (and wetlands). Apparently on the basis of a verbal report from Mr. Bainter, the HPA of 2012 was drafted by Mr. Bartrand. When Mr. Bartrand completed the illegal HPA of 2012, he sent copies of the document to the two lead agencies for the Shaw Creek NEPA project (Yakima County Surface Water – and – City of Yakima [Mr. Peters]). The Bainter project proposal documents also indicate that both NEPA lead agencies were contacted by him during the planning phases of the 2012 project.

Yakama Indian Nation

So Mr. Bainter had in hand a Critical Area Permit for a “Bainter Riparian Habitat Improvement Project” but no other permits for that project. And Mr. Bainter had in had an illegal HPA for a stream relocation and filling permit, with no corresponding project application and no other permits. Commenting agencies were informed by the City of

Yakima that Mr. Bainter would be improving the Riparian Habitat and would specifically place all fill material outside of the Shaw Creek FEMA 100-year Floodplain; this project proposal was entirely false. This false project proposal was sent to the Yakama Indian Nation for comments; the Yakama Tribe has been working hard to re-establish salmon and steelhead runs within the Yakima Valley. The Yakama Tribe indicated that they were concerned with their treaty rights with the United States and wished to have artifacts preserved. Mr. Peters had been advised in advance that Mr. Bainter would be destroying the stream and destroying in-stream riparian habitat; no effort was made to correctly inform the Yakama Nation that the real project was to destroy the stream and critical areas.

Lack of public notice

On a similar basis, members of the public were informed by the City that the Bainter project would be a planting of riparian vegetation. At no time were members of the public correctly informed that Mr. Bainter was going to perform a relocation of Shaw Creek and a filling of the legal watercourse and a filling of the Shaw Creek critical areas. The public had no opportunity to comment upon the relocation of the stream and the placement of fill. The Bainter project documents specifically indicated that there would be no placement of fill material within the Shaw Creek FEMA 100-year Floodplain. Mr. Bainter placed all the illegal fill material into the Shaw Creek FEMA 100-year Floodplain.

Dry flood channel

As for the so-called ‘dry flood channel’, Mr. Bainter did excavate this channel but immediately diverted all flows of Shaw Creek into this channel, now called the “Illegal-Bainter-Ditch”. Mr. Bainter and Mr. Durant submitted a diagram that attempted to justify the construction of the so-called ‘dry flood channel’. The diagram, per Mr. Bainter and Mr. Durant, demonstrated that water would overflow from the south bank of Shaw Creek on the Bainter land, flow down a gentle grade and then flow uphill towards homes that were located up and out of the Shaw Creek FEMA 100-year Floodplain. Needless to say, this diagram and site plan was a complete falsification due to the fact that water does not flow uphill as indicated by the developer. However, City of Yakima Planning Officials accepted the document without concern or comment. The so-called ‘dry flood channel’ remains as the present watercourse for the waters of Shaw Creek.

Filling of the watercourse and critical areas

With the filling of the legal watercourse and associated critical areas, Mr. Bainter placed tons of fill material into the Shaw Creek FEMA 100-year Floodplain. The R-1/B-2 boundary line is defined by the surveyed centerline of the historic, legal location of Shaw Creek. The recent 2014 site plan created by Mr. Durant and Mr. Bainter demonstrates that they now contend that the B-2 zoning district has expanded, with the new boundary line being the centerline of the Illegal-Bainter-Ditch. So Mr. Bainter and Mr. Durant now indicate that the illegal diversion of Shaw Creek and the illegal filling within the Shaw Creek FEMA 100-year Floodplain has created for them a reward; they now have more B-2 commercial land that is more valuable than R-1 land.

Filling of wetlands

Furthermore, Mr. Bainter filled wetlands along the historic, legal watercourse. The filling of wetlands was orchestrated to simplify the future crossing of Shaw Creek by utilities. Mr. Bainter had, in 2007, submitted sewer construction plans and he was facing the condition that expensive lateral boring would be required to cross Shaw Creek and the wetlands. With the 2012 project, Mr. Bainter filled the wetlands; in 2014, he would not be facing the difficulties of lateral boring under wetlands and under the wetland buffer zones. By filling the wetlands, Mr. Bainter's problems with future wetland studies and project costs were greatly simplified. Mr. Bainter would, in 2014, simply propose excavating directly through the former wetlands and place utility roadways directly across the site of the wetlands.

Repeated mowings

In 2012, Mr. Bainter brought an excavator to Shaw Creek. He excavated the so-called 'dry flood channel' and then diverted Shaw Creek into the excavated channel. Mr. Bainter added tons and tons of illegal fill material within the Shaw Creek FEMA 100-year Floodplain. Mr. Bainter filled the legal watercourse, filled wetlands, filled the Riparian Buffer Zone, and filled the wetland buffer zones. Mr. Bainter did not plant the 14,000 Sq Ft of native vegetation. Mr. Bainter repeatedly mowed vegetation up to the high water mark of the Illegal-Bainter-Ditch. Only an assortment of weeds and pasture grass survived under the repeated mowings.

Mr. Bainter and Mr. Peters asserted on September 25, 2014 that Mr. Bainter did plant native vegetation in 2012 but there was a zero percent survival rate. Out of 14,000 Sq Ft of planting, Mr. Bainter and Mr. Peters now assert that there was not a single plant that survived, but they now say that Mr. Bainter did actually perform the planting of vegetation; this issue is disputed. It is a fact that the City has been provided with photographs that the Riparian Buffer Zone, wetland buffer zone, and Shaw Creek FEMA 100-year Floodplain has been repeatedly mowed by Mr. Bainter. According to Mr. Peters and Mr. Bainter, the native vegetation was planted by Mr. Bainter, but then he repeatedly mowed all vegetation. There is no evidence that Mr. Bainter ever planted anything in 2012; most likely Mr. Peters falsified information within his Staff Report of September 25, 2014. While Mr. Bainter did illegally divert Shaw Creek and he did illegally place tons of fill material within critical areas, there is no evidence that Mr. Bainter did any planting of native vegetation in 2012 and 2013. Again, in 2012, Mr. Bainter did not possess the legal permits to perform either the riparian planting project or the stream diversion (and filling). The City of Yakima has been requested to withdraw the Critical Area Permit of 2012 due to the fact that the project application materials were false and misleading; the City has not cancelled the Critical Area Permit. Instead, Mr. Peters has indicated that Mr. Bainter is to comply with the requirements of the Critical Area Permit of 2012, planting another round of native vegetation along the watercourse. Mr. Peters has been informed that the planting of native plants along the Illegal-Bainter-Ditch is not the project proposed in 2012, but he has not responded. Mr. Peters has been informed that the native plants placed by Mr. Bainter on October 7, 2014 were not placed according to

the site plan and were not placed in a manner consistent with the required planting plans. The matter remains unresolved.

Notices of Complaint

Mr. Peters was given a series of Complaints dealing with the repeated illegal mowing of vegetation up to the high water mark of the Illegal-Bainter-Ditch. Mr. Bainter was photographed at the controls of the bush hog mower mowing right at the edge of the watercourse. This did result in the delivery of a stop order and notice of violation. Shortly thereafter, Mr. Bainter and Mr. Peters met privately and there was an agreement that the property owned by Bainter Group LLC could be mowed. Essentially, there was a verbal agreement between the two that Mr. Bainter would be granted a formal immunity from compliance with the Yakima Critical Areas Ordinance. Just like Mr. Radke, the property owner Bainter Group LLC would be allowed to cut all vegetation within the Shaw Creek FEMA 100-year Floodplain, wetland buffer zone, and within the Shaw Creek Riparian Buffer Zone.

A notice of complaint was sent to Mr. Peters that the illegal diversion of Shaw Creek into the Illegal-Bainter-Ditch on the Bainter Group LLC land was associated with crawl space flooding in homes downstream from the Bainter site. Photographs showed the heavy flows of water being pumped from under a home. There was no response to this notice by Mr. Peters and the City of Yakima.

Legal requirement to notify Ecology, FEMA, Downstream Land Owners

Prior to the diversion of Shaw Creek there should have been a series of actions. Mr. Bainter should have honestly submitted a project proposal. There should have been an opportunity for the public to make comments. Commenting agencies should have provided input. Permits should have been obtained. And there is a legal requirement for the City of Yakima to inform FEMA, Ecology, and downstream property owners who might be affected by flooding that results from alteration of the watercourse. In this case, there is evidence of flooding within crawl spaces in home immediately downstream from the illegal Bainter diversion. When Mr. Peters was informed (via a written note) that there was a legal duty to inform FEMA and Ecology, there is no evidence that the required notifications have occurred. Presumably, Mr. Peters does not want attention from Ecology and FEMA brought to Shaw Creek while he is attempting to orchestrate critical area alterations that would benefit his Shaw Creek NEPA plans.

Fulcrum Wetland Delineation Study

In early 2014, Mr. Bainter arranged for a Fulcrum Wetland Delineation Study and Report. Within the Fulcrum Report, there was a clear diagram showing the position of Shaw Creek in 2011 compared with the location in 2014. A small remnant of wetland vegetation was identified on the extreme east side of the Bainter Group LLC property. No wetlands were identified along the Illegal-Bainter-Ditch. A remnant of wetlands was not appreciated along the extreme west side of Shaw Creek. On the property immediately upstream, extensive wetland vegetation packs the watercourse, wetlands, and banks of the stream. Along Cottonwood Grove, extensive wetland vegetation is noted as well that

extends fifty feet to the north and to the south. And areas of wetlands are also noted along the Radke portion of Shaw Creek.

There are comments within the Fulcrum Report that Mr. Bainter informed the consultants that Shaw Creek was an irrigation ditch. With the information in the Fulcrum report that the watercourse was really an irrigation ditch, the consultants stated that the identified wetland would not be a regulated wetland.

2014 Project Plans

In 2014, Mr. Bainter and Mr. Durant submitted a new set of project applications by submitting a JARPA, SEPA and Critical Area Forms. Mr. Bainter and Mr. Durant also submitted a site plan. Mr. Bainter stated in his project proposal that he would be “crossing Shaw Creek” and made no mention of the fact that the location of Shaw Creek was changed after the illegal diversion of 2012. There was no mention that the Shaw Creek FEMA 100-year Floodplain had been filled. There was no mention that wetlands had been filled. The 2014 site plan identified the Illegal-Bainter-Ditch as “Shaw Creek”. The stream was identified by Mr. Bainter and Mr. Durant as a perennial stream. At the same time, Mr. Bainter and Mr. Durant indicated that the stream was not a perennial stream, containing now flows of water. In addition, Mr. Peters at the City of Yakima Planning Department has completely affirmed the story that Shaw Creek is both a perennial stream and a non-perennial stream (dry for six months of the year).

Mr. Bainter’s plan to mitigate impacts to critical areas was to throw out some pasture grass seeds on the utility roadway easements, then to cover the seeds with tons of crushed

rock. Mr. Peters indicated that he would need to see, at a later time, a seed-proof-document that demonstrated to his satisfaction that seeds covered with tons of rock adequately mitigated the adverse impacts on critical areas; this so-called development “condition” was patently absurd. Mr. Peters has indicated that Mr. Bainter would need to obtain an HPA from Mr. Bartrand at the WDFW; such a development “condition” is, of course, very concerning due to the fact that Mr. Bartrand issued an HPA in 2012 that had nothing to do with the project proposal.

The 2014 Bainter project proposes to place a short stub of plastic pipe of undetermined length (between 50-100 feet). Mr. Bainter made the statement that Shaw Creek would go dry so that he would excavated across the “stream” (Illegal-Bainter-Ditch), even though Shaw Creek is known to be a perennial stream with local populations of fish that swim in pools on the Bainter and Radke portions of the stream.

Dewatering of Shaw Creek

On October 20, 2014 for the first time ever, Shaw Creek has gone dry. On October 20, 2014 flows of Shaw Creek moved through the upstream properties to the edge of the Bainter land. But there were no flows of water through the Bainter parcel. Lush green grass along the west property line of the Bainter Group LLC land suggests an abundance of underground water flows. Further to the east, ground is bare and vegetation along the stream is sparse. There is very serious concern that fecal bacteria in the Shaw Creek surface water is now charging the shallow subsurface aquifer at the Bainter site.

Unpermitted excavations at the Radke site

Additional observations downstream, showed that Mr. Radke had an excavator working within Shaw Creek and within the associated critical areas. The Shaw Creek watercourse had been excavated for several hundred feet. Fish containing pools had been destroyed and contained only mud. Drying piles of mud were located along the sides of the stream. Wetlands had been destroyed. Large tire tracks were noted within the mud along the north (Radke) side of the stream. Broken branches and scarred bark on tree trunks demonstrated the recent work of heavy machinery. Entire trees and root systems were dug up and discarded in the riparian zone. No public notice was given regarding any permitting process, so it is assumed that the excavations by Mr. Radke were performed without permits.

Biology site visit

The dewatering of Shaw Creek on the Bainter parcel and the excavations within Shaw Creek on the Radke parcel were noted on October 20, 2014. The Shaw Creek NEPA biology site visit occurred just two days later on October 22-23, 2014. The biologists performing the contracted site visit for Shaw Creek NEPA would document a dry stream bed, very limited wetlands, no pools, and no populations of fish. Prior to October 20, 2014, biologists would have seen more wetlands, in-stream riparian areas, continuous flows of water, and fish within pools.

Mr. Thomas Durant

As for Mr. Durant, he illegally altered the zoning ordinance, submitted project plans where Mr. Radke would illegally move commercial traffic through the R-1 zoning district, submitted an entirely bogus set of 2012 Bainter project plans, facilitated the destruction of Shaw Creek (and critical areas), violated ethics standards for the AICP, and has now assisted with the dewatering of Shaw Creek with the 2014 Bainter project. The 2014 JARPA, signed by Mr. Durant, will be submitted to the US Prosecutor for an 18 U.S.C. 1001 review; this would appear to be a federal felony offense. Mr. Durant's actions will be submitted for an ethics investigation where he may lose his AICP certification. Mr. Durant will face a CWA 404(C) investigation and prosecution. Mr. Durant may also be liable for additional liabilities related to flooding of homes in Cottonwood Grove and restoration of critical areas. It is very likely that Mr. Durant has participated in a conspiracy to violate the federal Clean Water Act. A key to affirming the conspiracy will be an interview and deposition of Mr. Durant along with a review of the extensive notes that he retains in client files. Mr. Durant is not an attorney so his materials are not protected from discovery.

Mr. Glen Radke

Mr. Radke has a longstanding history of mowing all vegetation up to the high water mark of the stream; however, he had a letter from the City of Yakima that permitted the destruction of vegetation within the federally protected Riparian Buffer Zone. More recently (October 2014), illegal destruction of critical areas by Mr. Radke has been documented including: illegal excavation of the Shaw Creek watercourse, illegal

destruction of fish pools; illegal destruction of fish; illegal destruction of trees within the Riparian Buffer Zone; illegal placement of fill material within wetlands and within the Shaw Creek FEMA 100-year Floodplain. It is likely that Mr. Radke has participated in a conspiracy to violate the federal Clean Water Act. Mr. Radke pays Mr. Durant as a professional adviser regarding his B-2 commercial land and development plans. It is assumed that Mr. Durant helped to coordinate the recent critical area destruction on the Radke portion of Shaw Creek.

Mr. Eric Bartrand - WDFW

Mr. Bartrand has emphatically declared that he wants Shaw Creek abandoned at the present location. Mr. Bartrand issued the illegal HPA of 2012 to Mr. Bainter. When Mr. Bartrand can issue this HPA of 2012 with no associated project application there are very serious concerns. There is a permitting process that is totally without controls, checks or balances. In the complete absence of oversight from the public or supervisors, Mr. Bartrand issued to Mr. Bainter a single permit dealing with the destruction of Shaw Creek and the filling of critical areas. An independent investigation of the WDFW in general and Mr. Bartrand specifically, should be performed. The actions of Mr. Bartrand might be considered grounds for dismissal. Without question, the actions of Mr. Bartrand demonstrate the corruption of the permitting process. It is very concerning that Mr. Bartrand appeared to coordinate his activities with the two lead agencies for the Shaw Creek NEPA process (Yakima County Surface Water, City of Yakima-Mr. Peters).

Mr. Bartrand continues an active role with the WDFW and appears to continue to make all local WDFW decisions regarding Shaw Creek. In August 2014, Mr. Bartrand was

consulted by Mr. Peters, to determine if the mowing within critical areas of Shaw Creek was considered an issue by the WDFW; Mr. Bartrand commented that he had no problem with Mr. Bainter (and Bainter Group LLC) mowing within critical areas.

Mr. Bartrand has engaged in actions supporting a conspiracy to violate the federal Clean Water Act and other environmental regulations. He copied the illegal HPA of 2012 to the two lead agents with Shaw Creek NEPA, making sure that these Officials at Yakima County (Surface Water Division) and the City of Yakima (Mr. Peters) were aware that Shaw Creek with the associated critical areas would be destroyed. To establish that there has been a greater conspiracy to destroy critical areas, interviews and depositions (along with reviews of emails and notes) will be required.

Mr. Jeff Peters

Mr. Jeff Peters has three roles that create conflicts for him and others. As the Supervising Planner for the Bainter development, he has demonstrated that he will accept and approve all kinds of documents and project proposals that favor Mr. Bainter, Mr. Radke, and Mr. Durant. Mr. Peters also is a decision-maker in Code Enforcement, making determinations regarding Stop Orders, Violations, and Restoration. The third major role for Mr. Jeff Peters is his appointment as the City of Yakima leader for Shaw Creek NEPA. Mr. Peters has made self-serving Planning and Code Enforcement decisions that benefit his Shaw Creek NEPA process and project.

Mr. Peters completely failed to stop the destruction of Shaw Creek and the associated critical areas in 2012 when he was informed through the HPA that Mr. Bainter had plans

to destroy the stream. Mr. Peters has not taken action to cancel the 2012 Critical Area Permit for Mr. Bainter, even though this permit was obtained by means of fraud and misrepresentation (such as a diagram demonstrating water flowing uphill). Rather, Mr. Peters met privately with Mr. Bainter and agreed that Bainter Group LLC could mow Shaw Creek critical areas (riparian buffer zone, wetland buffer zone, Shaw Creek NEPA 100-year Floodplain). Mr. Peters has disallowed any public comment regarding the relocation of Shaw Creek and the filling of critical areas; rather, he has simply processed 2014 Bainter project documents and has indicated that the so-called 'dry flood channel' is now "Shaw Creek".

The motivations for Mr. Peters decisions requires some assumptions and speculations. It is assumed that his decisions can be explained by a more general conspiracy to violate the federal Clean Water Act. Mr. Peters decisions assist Mr. Bainter and Mr. Radke as they destroy critical areas, immune from compliance with environmental regulations. As critical areas are destroyed, then the Shaw Creek NEPA process is facilitated. For example, the biology site inspection of October 22 and 23, 2014 would find no fish, no pools, very limited wetlands, and mowed buffer zones. When these facts are applied to the Shaw Creek NEPA proposal of creating a ditch or swale, with no fish, no pools, no trees and no native vegetation, there is consistency. Legally correct decisions by Mr. Peters to protect Shaw Creek critical areas would lead to difficulties in relocating an F-Stream with protected buffer zones.

Interviews, depositions, and a review of communications (emails, notes, other) will be required before a greater conspiracy can be proven. However, there is reasonable

preliminary evidence that several individuals have coordinated their decisions and actions leading to critical area destruction.

Mr. Greg Bainter and Bainter Group LLC

Mr. Greg Bainter began to consider commercial development on his land in 2003. During land use hearings, Mr. Bainter indicated he would build a road and apply infrastructure to the site. In 2003, it was well documented that Shaw Creek was a perennial, fish bearing stream. In addition, it was well documented that Shaw Creek contained habitat for steelhead. Flooding from Shaw Creek to the floodplain on the valley floor was well documented. In 2004, Mr. Bainter moved through zoning hearings. While roadway, utility, and access issues were discussed in open record hearings, most of the input from the hearing examiner, the public, and commenting agencies was nullified by private meetings between the developer and Planning Officials; the zoning ordinance was changed and a site plan was altered.

In 2009, Bainter Group LLC obtained ownership of the parcel of land containing Shaw Creek; this company would not be expected to possess any new or established rights to destroy vegetation within critical areas. Recently, Mr. Peters conferred to Bainter Group LLC the ongoing right to mow critical areas associated with Shaw Creek. Bainter Group LLC does nothing with the land; this is idle land with no commercial or residential use. In 2012, Mr. Bainter and Bainter Group LLC, indicated there would be a private or residential project where, spontaneously, they would undertake an expensive project to improve riparian vegetation and to reduce flood hazards that threaten neighbors homes. This project was a fraud. Since 2012, Mr. Bainter and Bainter Group LLC has destroyed

Shaw Creek and the associated critical areas. The critical area destruction is well documented, supported by hard evidence. The critical area destruction at the Bainter site has been facilitated by Mr. Jeff Peters and Mr. Eric Bartrand. Mr. Bainter has been advised by Mr. Durant.